

AMENDED IN ASSEMBLY JUNE 24, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MARCH 26, 2015

SENATE BILL

No. 68

Introduced by Senator Liu

January 8, 2015

An act to amend Sections 366.21 and 366.22 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 68, as amended, Liu. Minor *or nonminor dependent* parents: reunification services.

(1) Existing law establishes the jurisdiction of the juvenile court, which may adjudge children to be dependents of the court under certain circumstances, including when the child suffered or there is a substantial risk that the child will suffer serious physical harm, or a parent fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law establishes the grounds for removal of a dependent child from the custody of his or her parents or guardian, and establishes procedures to determine temporary placement of a dependent child. When a court orders the removal of a child from the physical custody of his or her parent, existing law generally requires the court to order the return of the child to the physical custody of his or her parent at the review hearings held 6 months, 12 months, and 18 months, respectively, after the initial disposition hearing, unless the court finds that the return of the child would create a substantial risk of detriment, or substantial danger, to the safety, protection, or physical or emotional well-being of the child. In making this determination, existing law

requires the court to consider the efforts or progress, or both, demonstrated by the parent and the extent to which he or she availed himself or herself of reunification services, taking into account the particular barriers to an incarcerated, institutionalized, detained, or deported parent's or guardian's access to those court-mandated reunification services and ability to maintain contact with his or her child.

This bill would require the court, in making its determination at those review hearings, to take into account the particular barriers to a minor ~~parent~~ *parent or a nonminor dependent parent*.

(2) If a child is not returned to a parent or legal guardian at the 18-month permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to the parent or legal guardian, as specified, existing law authorizes the court to continue the case for up to 6 months for a subsequent permanency review hearing, as specified.

This bill would authorize the court to continue the case for up to 6 months for the provision of additional reunification services to a minor *parent or a nonminor dependent parent* at the initial hearing who is making significant and consistent progress in establishing a safe home for the child's return for a subsequent permanency review hearing.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 366.21 of the Welfare and Institutions
2 ~~Code, as amended by Section 6 of Chapter 219 of the Statutes of~~
3 ~~2014,~~*Code*, is amended to read:
4 366.21. (a) Every hearing conducted by the juvenile court
5 reviewing the status of a dependent child shall be placed on the
6 appearance calendar. The court shall advise all persons present at
7 the hearing of the date of the future hearing and of their right to
8 be present and represented by counsel.
9 (b) Except as provided in Sections 294 and 295, notice of the
10 hearing shall be provided pursuant to Section 293.
11 (c) At least 10 calendar days prior to the hearing, the social
12 worker shall file a supplemental report with the court regarding
13 the services provided or offered to the parent or legal guardian to

1 enable him or her to assume custody and the efforts made to
2 achieve legal permanence for the child if efforts to reunify fail,
3 including, but not limited to, efforts to maintain relationships
4 between a child who is 10 years of age or older and has been in
5 out-of-home placement for six months or longer and individuals
6 who are important to the child, consistent with the child's best
7 interests; the progress made; and, where relevant, the prognosis
8 for return of the child to the physical custody of his or her parent
9 or legal guardian; and shall make his or her recommendation for
10 disposition. If the child is a member of a sibling group described
11 in subparagraph (C) of paragraph (1) of subdivision (a) of Section
12 361.5, the report and recommendation may also take into account
13 those factors described in subdivision (e) relating to the child's
14 sibling group. If the recommendation is not to return the child to
15 a parent or legal guardian, the report shall specify why the return
16 of the child would be detrimental to the child. The social worker
17 shall provide the parent or legal guardian, counsel for the child,
18 and any court-appointed child advocate with a copy of the report,
19 including his or her recommendation for disposition, at least 10
20 calendar days prior to the hearing. In the case of a child removed
21 from the physical custody of his or her parent or legal guardian,
22 the social worker shall, at least 10 calendar days prior to the
23 hearing, provide a summary of his or her recommendation for
24 disposition to any foster parents, relative caregivers, and certified
25 foster parents who have been approved for adoption by the State
26 Department of Social Services when it is acting as an adoption
27 agency or by a county adoption agency, community care facility,
28 or foster family agency having the physical custody of the child.
29 The social worker shall include a copy of the Judicial Council
30 Caregiver Information Form (JV-290) with the summary of
31 recommendations to the child's foster parents, relative caregivers,
32 or foster parents approved for adoption, in the caregiver's primary
33 language when available, along with information on how to file
34 the form with the court.

35 (d) Prior to any hearing involving a child in the physical custody
36 of a community care facility or a foster family agency that may
37 result in the return of the child to the physical custody of his or
38 her parent or legal guardian, or in adoption or the creation of a
39 legal guardianship, or in the case of an Indian child, in consultation
40 with the child's tribe, tribal customary adoption, the facility or

1 agency shall file with the court a report, or a Judicial Council
2 Caregiver Information Form (JV-290), containing its
3 recommendation for disposition. Prior to the hearing involving a
4 child in the physical custody of a foster parent, a relative caregiver,
5 or a certified foster parent who has been approved for adoption by
6 the State Department of Social Services when it is acting as an
7 adoption agency or by a county adoption agency, the foster parent,
8 relative caregiver, or the certified foster parent who has been
9 approved for adoption by the State Department of Social Services
10 when it is acting as an adoption agency or by a county adoption
11 agency, may file with the court a report containing his or her
12 recommendation for disposition. The court shall consider the report
13 and recommendation filed pursuant to this subdivision prior to
14 determining any disposition.

15 (e) At the review hearing held six months after the initial
16 dispositional hearing, but no later than 12 months after the date
17 the child entered foster care as determined in Section 361.49,
18 whichever occurs earlier, after considering the admissible and
19 relevant evidence, the court shall order the return of the child to
20 the physical custody of his or her parent or legal guardian unless
21 the court finds, by a preponderance of the evidence, that the return
22 of the child to his or her parent or legal guardian would create a
23 substantial risk of detriment to the safety, protection, or physical
24 or emotional well-being of the child. The social worker shall have
25 the burden of establishing that detriment. At the hearing, the court
26 shall consider the criminal history, obtained pursuant to paragraph
27 (1) of subdivision (f) of Section 16504.5, of the parent or legal
28 guardian subsequent to the child's removal to the extent that the
29 criminal record is substantially related to the welfare of the child
30 or the parent's or guardian's ability to exercise custody and control
31 regarding his or her child, provided the parent or legal guardian
32 agreed to submit fingerprint images to obtain criminal history
33 information as part of the case plan. The court shall also consider
34 whether the child can be returned to the custody of his or her parent
35 who is enrolled in a certified substance abuse treatment facility
36 that allows a dependent child to reside with his or her parent. The
37 fact that the parent is enrolled in a certified substance abuse
38 treatment facility shall not be, for that reason alone, prima facie
39 evidence of detriment. The failure of the parent or legal guardian
40 to participate regularly and make substantive progress in

1 court-ordered treatment programs shall be prima facie evidence
2 that return would be detrimental. In making its determination, the
3 court shall review and consider the social worker's report and
4 recommendations and the report and recommendations of any child
5 advocate appointed pursuant to Section 356.5; and shall consider
6 the efforts or progress, or both, demonstrated by the parent or legal
7 guardian and the extent to which he or she availed himself or
8 herself of services provided, taking into account the particular
9 barriers to a minor parent *or a nonminor dependent parent*, or an
10 incarcerated, institutionalized, detained, or deported parent's or
11 legal guardian's access ~~to~~, to those court-mandated services and
12 ability to maintain contact with his or her child.

13 Regardless of whether the child is returned to a parent or legal
14 guardian, the court shall specify the factual basis for its conclusion
15 that the return would be detrimental or would not be detrimental.
16 The court also shall make appropriate findings pursuant to
17 subdivision (a) of Section 366; and, where relevant, shall order
18 any additional services reasonably believed to facilitate the return
19 of the child to the custody of his or her parent or legal guardian.
20 The court shall also inform the parent or legal guardian that if the
21 child cannot be returned home by the 12-month permanency
22 hearing, a proceeding pursuant to Section 366.26 may be instituted.
23 This section does not apply in a case where, pursuant to Section
24 361.5, the court has ordered that reunification services shall not
25 be provided.

26 If the child was under three years of age on the date of the initial
27 removal, or is a member of a sibling group described in
28 subparagraph (C) of paragraph (1) of subdivision (a) of Section
29 361.5, and the court finds by clear and convincing evidence that
30 the parent failed to participate regularly and make substantive
31 progress in a court-ordered treatment plan, the court may schedule
32 a hearing pursuant to Section 366.26 within 120 days. If, however,
33 the court finds there is a substantial probability that the child, who
34 was under three years of age on the date of initial removal or is a
35 member of a sibling group described in subparagraph (C) of
36 paragraph (1) of subdivision (a) of Section 361.5, may be returned
37 to his or her parent or legal guardian within six months or that
38 reasonable services have not been provided, the court shall continue
39 the case to the 12-month permanency hearing.

1 For the purpose of placing and maintaining a sibling group
2 together in a permanent home, the court, in making its
3 determination to schedule a hearing pursuant to Section 366.26
4 for some or all members of a sibling group, as described in
5 subparagraph (C) of paragraph (1) of subdivision (a) of Section
6 361.5, shall review and consider the social worker's report and
7 recommendations. Factors the report shall address, and the court
8 shall consider, may include, but need not be limited to, whether
9 the sibling group was removed from parental care as a group, the
10 closeness and strength of the sibling bond, the ages of the siblings,
11 the appropriateness of maintaining the sibling group together, the
12 detriment to the child if sibling ties are not maintained, the
13 likelihood of finding a permanent home for the sibling group,
14 whether the sibling group is currently placed together in a
15 preadoptive home or has a concurrent plan goal of legal
16 permanency in the same home, the wishes of each child whose
17 age and physical and emotional condition permits a meaningful
18 response, and the best interests of each child in the sibling group.
19 The court shall specify the factual basis for its finding that it is in
20 the best interests of each child to schedule a hearing pursuant to
21 Section 366.26 within 120 days for some or all of the members of
22 the sibling group.

23 If the child was removed initially under subdivision (g) of
24 Section 300 and the court finds by clear and convincing evidence
25 that the whereabouts of the parent are still unknown, or the parent
26 has failed to contact and visit the child, the court may schedule a
27 hearing pursuant to Section 366.26 within 120 days. The court
28 shall take into account any particular barriers to a parent's ability
29 to maintain contact with his or her child due to the parent's
30 incarceration, institutionalization, detention by the United States
31 Department of Homeland Security, or deportation. If the court
32 finds by clear and convincing evidence that the parent has been
33 convicted of a felony indicating parental unfitness, the court may
34 schedule a hearing pursuant to Section 366.26 within 120 days.

35 If the child had been placed under court supervision with a
36 previously noncustodial parent pursuant to Section 361.2, the court
37 shall determine whether supervision is still necessary. The court
38 may terminate supervision and transfer permanent custody to that
39 parent, as provided for by paragraph (1) of subdivision (b) of
40 Section 361.2.

1 In all other cases, the court shall direct that any reunification
2 services previously ordered shall continue to be offered to the
3 parent or legal guardian pursuant to the time periods set forth in
4 subdivision (a) of Section 361.5, provided that the court may
5 modify the terms and conditions of those services.

6 If the child is not returned to his or her parent or legal guardian,
7 the court shall determine whether reasonable services that were
8 designed to aid the parent or legal guardian in overcoming the
9 problems that led to the initial removal and the continued custody
10 of the child have been provided or offered to the parent or legal
11 guardian. The court shall order that those services be initiated,
12 continued, or terminated.

13 (f) The permanency hearing shall be held no later than 12
14 months after the date the child entered foster care, as that date is
15 determined pursuant to Section 361.49. At the permanency hearing,
16 the court shall determine the permanent plan for the child, which
17 shall include a determination of whether the child will be returned
18 to the child's home and, if so, when, within the time limits of
19 subdivision (a) of Section 361.5. After considering the relevant
20 and admissible evidence, the court shall order the return of the
21 child to the physical custody of his or her parent or legal guardian
22 unless the court finds, by a preponderance of the evidence, that
23 the return of the child to his or her parent or legal guardian would
24 create a substantial risk of detriment to the safety, protection, or
25 physical or emotional well-being of the child. The social worker
26 shall have the burden of establishing that detriment. At the
27 permanency hearing, the court shall consider the criminal history,
28 obtained pursuant to paragraph (1) of subdivision (f) of Section
29 16504.5, of the parent or legal guardian subsequent to the child's
30 removal to the extent that the criminal record is substantially related
31 to the welfare of the child or the parent's or legal guardian's ability
32 to exercise custody and control regarding his or her child, provided
33 that the parent or legal guardian agreed to submit fingerprint images
34 to obtain criminal history information as part of the case plan. The
35 court shall also determine whether reasonable services that were
36 designed to aid the parent or legal guardian to overcome the
37 problems that led to the initial removal and continued custody of
38 the child have been provided or offered to the parent or legal
39 guardian. For each youth 16 years of age and older, the court shall
40 also determine whether services have been made available to assist

1 him or her in making the transition from foster care to independent
2 living. The court shall also consider whether the child can be
3 returned to the custody of his or her parent who is enrolled in a
4 certified substance abuse treatment facility that allows a dependent
5 child to reside with his or her parent. The fact that the parent is
6 enrolled in a certified substance abuse treatment facility shall not
7 be, for that reason alone, prima facie evidence of detriment. The
8 failure of the parent or legal guardian to participate regularly and
9 make substantive progress in court-ordered treatment programs
10 shall be prima facie evidence that return would be detrimental. In
11 making its determination, the court shall review and consider the
12 social worker's report and recommendations and the report and
13 recommendations of any child advocate appointed pursuant to
14 Section 356.5, shall consider the efforts or progress, or both,
15 demonstrated by the parent or legal guardian and the extent to
16 which he or she availed himself or herself of services provided,
17 taking into account the particular barriers to a minor parent *or a*
18 *nonminor dependent parent*, or an incarcerated, institutionalized,
19 detained, or deported parent's or legal guardian's ~~access~~, *access*
20 to those court-mandated services and ability to maintain contact
21 with his or her child, and shall make appropriate findings pursuant
22 to subdivision (a) of Section 366.

23 Regardless of whether the child is returned to his or her parent
24 or legal guardian, the court shall specify the factual basis for its
25 decision. If the child is not returned to a parent or legal guardian,
26 the court shall specify the factual basis for its conclusion that the
27 return would be detrimental. The court also shall make a finding
28 pursuant to subdivision (a) of Section 366. If the child is not
29 returned to his or her parent or legal guardian, the court shall
30 consider, and state for the record, in-state and out-of-state
31 placement options. If the child is placed out of the state, the court
32 shall make a determination whether the out-of-state placement
33 continues to be appropriate and in the best interests of the child.

34 (g) If the time period in which the court-ordered services were
35 provided has met or exceeded the time period set forth in
36 subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a)
37 of Section 361.5, as appropriate, and a child is not returned to the
38 custody of a parent or legal guardian at the permanency hearing
39 held pursuant to subdivision (f), the court shall do one of the
40 following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian, if the parent has

1 been arrested and issued an immigration hold, detained by the
2 United States Department of Homeland Security, or deported to
3 his or her country of origin, and the court determines either that
4 there is a substantial probability that the child will be returned to
5 the physical custody of his or her parent or legal guardian and
6 safely maintained in the home within the extended period of time
7 or that reasonable services have not been provided to the parent
8 or legal guardian.

9 (3) For purposes of paragraph (2), in order to find a substantial
10 probability that the child will be returned to the physical custody
11 of his or her parent or legal guardian and safely maintained in the
12 home within the extended period of time, the court shall find all
13 of the following:

14 (A) The parent or legal guardian has consistently and regularly
15 contacted and visited with the child, taking into account any
16 particular barriers to a parent's ability to maintain contact with his
17 or her child due to the parent's arrest and receipt of an immigration
18 hold, detention by the United States Department of Homeland
19 Security, or deportation.

20 (B) The parent or legal guardian has made significant progress
21 in resolving the problems that led to the child's removal from the
22 home.

23 (C) The parent or legal guardian has demonstrated the capacity
24 or ability both to complete the objectives of his or her treatment
25 plan and to provide for the child's safety, protection, physical and
26 emotional well-being, and special needs.

27 (4) Order that a hearing be held within 120 days, pursuant to
28 Section 366.26, but only if the court does not continue the case to
29 the permanency planning review hearing and there is clear and
30 convincing evidence that reasonable services have been provided
31 or offered to the parents or legal guardians. On and after January
32 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered
33 if the child is a nonminor dependent, unless the nonminor
34 dependent is an Indian child and tribal customary adoption is
35 recommended as the permanent plan.

36 (5) Order that the child remain in long-term foster care, but only
37 if the court finds by clear and convincing evidence, based upon
38 the evidence already presented to it, including a recommendation
39 by the State Department of Social Services when it is acting as an
40 adoption agency or by a county adoption agency, that there is a

1 compelling reason for determining that a hearing held pursuant to
2 Section 366.26 is not in the best interests of the child because the
3 child is not a proper subject for adoption and has no one willing
4 to accept legal guardianship. For purposes of this section, a
5 recommendation by the State Department of Social Services when
6 it is acting as an adoption agency or by a county adoption agency
7 that adoption is not in the best interests of the child shall constitute
8 a compelling reason for the court's determination. That
9 recommendation shall be based on the present circumstances of
10 the child and shall not preclude a different recommendation at a
11 later date if the child's circumstances change. On and after January
12 1, 2012, the nonminor dependent's legal status as an adult is in
13 and of itself a compelling reason not to hold a hearing pursuant to
14 Section 366.26. The court may order that a nonminor dependent
15 who otherwise is eligible pursuant to Section 11403 remain in a
16 planned, permanent living arrangement.

17 If the court orders that a child who is 10 years of age or older
18 remain in long-term foster care, the court shall determine whether
19 the agency has made reasonable efforts to maintain the child's
20 relationships with individuals other than the child's siblings who
21 are important to the child, consistent with the child's best interests,
22 and may make any appropriate order to ensure that those
23 relationships are maintained.

24 If the child is not returned to his or her parent or legal guardian,
25 the court shall consider, and state for the record, in-state and
26 out-of-state options for permanent placement. If the child is placed
27 out of the state, the court shall make a determination whether the
28 out-of-state placement continues to be appropriate and in the best
29 interests of the child.

30 (h) In any case in which the court orders that a hearing pursuant
31 to Section 366.26 shall be held, it shall also order the termination
32 of reunification services to the parent or legal guardian. The court
33 shall continue to permit the parent or legal guardian to visit the
34 child pending the hearing unless it finds that visitation would be
35 detrimental to the child. The court shall make any other appropriate
36 orders to enable the child to maintain relationships with individuals,
37 other than the child's siblings, who are important to the child,
38 consistent with the child's best interests. When the court orders a
39 termination of reunification services to the parent or legal guardian,
40 it shall also order that the child's caregiver receive the child's birth

1 certificate in accordance with Sections 16010.4 and 16010.5.
2 Additionally, when the court orders a termination of reunification
3 services to the parent or legal guardian, it shall order, when
4 appropriate, that a child who is 16 years of age or older receive
5 his or her birth certificate.

6 (i) (1) Whenever a court orders that a hearing pursuant to
7 Section 366.26, including, when, in consultation with the child's
8 tribe, tribal customary adoption is recommended, shall be held, it
9 shall direct the agency supervising the child and the county
10 adoption agency, or the State Department of Social Services when
11 it is acting as an adoption agency, to prepare an assessment that
12 shall include:

13 (A) Current search efforts for an absent parent or parents or
14 legal guardians.

15 (B) A review of the amount of and nature of any contact between
16 the child and his or her parents or legal guardians and other
17 members of his or her extended family since the time of placement.
18 Although the extended family of each child shall be reviewed on
19 a case-by-case basis, "extended family" for the purpose of this
20 subparagraph shall include, but not be limited to, the child's
21 siblings, grandparents, aunts, and uncles.

22 (C) An evaluation of the child's medical, developmental,
23 scholastic, mental, and emotional status.

24 (D) A preliminary assessment of the eligibility and commitment
25 of any identified prospective adoptive parent or legal guardian,
26 including the prospective tribal customary adoptive parent,
27 particularly the caretaker, to include a social history including
28 screening for criminal records and prior referrals for child abuse
29 or neglect, the capability to meet the child's needs, and the
30 understanding of the legal and financial rights and responsibilities
31 of adoption and guardianship. If a proposed guardian is a relative
32 of the minor, the assessment shall also consider, but need not be
33 limited to, all of the factors specified in subdivision (a) of Section
34 361.3 and in Section 361.4.

35 (E) The relationship of the child to any identified prospective
36 adoptive parent or legal guardian, the duration and character of
37 the relationship, the degree of attachment of the child to the
38 prospective relative guardian or adoptive parent, the relative's or
39 adoptive parent's strong commitment to caring permanently for
40 the child, the motivation for seeking adoption or guardianship, a

1 statement from the child concerning placement and the adoption
2 or guardianship, and whether the child, if over 12 years of age,
3 has been consulted about the proposed relative guardianship
4 arrangements, unless the child's age or physical, emotional, or
5 other condition precludes his or her meaningful response, and if
6 so, a description of the condition.

7 (F) A description of efforts to be made to identify a prospective
8 adoptive parent or legal guardian, including, but not limited to,
9 child-specific recruitment and listing on an adoption exchange
10 within the state or out of the state.

11 (G) An analysis of the likelihood that the child will be adopted
12 if parental rights are terminated.

13 (H) In the case of an Indian child, in addition to subparagraphs
14 (A) to (G), inclusive, an assessment of the likelihood that the child
15 will be adopted, when, in consultation with the child's tribe, a
16 tribal customary adoption, as defined in Section 366.24, is
17 recommended. If tribal customary adoption is recommended, the
18 assessment shall include an analysis of both of the following:

19 (i) Whether tribal customary adoption would or would not be
20 detrimental to the Indian child and the reasons for reaching that
21 conclusion.

22 (ii) Whether the Indian child cannot or should not be returned
23 to the home of the Indian parent or Indian custodian and the reasons
24 for reaching that conclusion.

25 (2) (A) A relative caregiver's preference for legal guardianship
26 over adoption, if it is due to circumstances that do not include an
27 unwillingness to accept legal or financial responsibility for the
28 child, shall not constitute the sole basis for recommending removal
29 of the child from the relative caregiver for purposes of adoptive
30 placement.

31 (B) Regardless of his or her immigration status, a relative
32 caregiver shall be given information regarding the permanency
33 options of guardianship and adoption, including the long-term
34 benefits and consequences of each option, prior to establishing
35 legal guardianship or pursuing adoption. If the proposed permanent
36 plan is guardianship with an approved relative caregiver for a
37 minor eligible for aid under the Kin-GAP Program, as provided
38 for in Article 4.7 (commencing with Section 11385) of Chapter 2
39 of Part 3 of Division 9, the relative caregiver shall be informed
40 about the terms and conditions of the negotiated agreement

1 pursuant to Section 11387 and shall agree to its execution prior to
2 the hearing held pursuant to Section 366.26. A copy of the executed
3 negotiated agreement shall be attached to the assessment.

4 (j) If, at any hearing held pursuant to Section 366.26, a
5 guardianship is established for the minor with an approved relative
6 caregiver, and juvenile court dependency is subsequently
7 dismissed, the minor shall be eligible for aid under the Kin-GAP
8 Program, as provided for in Article 4.5 (commencing with Section
9 11360) or Article 4.7 (commencing with Section 11385), as
10 applicable, of Chapter 2 of Part 3 of Division 9.

11 (k) As used in this section, “relative” means an adult who is
12 related to the minor by blood, adoption, or affinity within the fifth
13 degree of kinship, including stepparents, stepsiblings, and all
14 relatives whose status is preceded by the words “great,”
15 “great-great,” or “grand,” or the spouse of any of those persons
16 even if the marriage was terminated by death or dissolution. If the
17 proposed permanent plan is guardianship with an approved relative
18 caregiver for a minor eligible for aid under the Kin-GAP Program,
19 as provided for in Article 4.7 (commencing with Section 11385)
20 of Chapter 2 of Part 3 of Division 9, “relative” as used in this
21 section has the same meaning as “relative” as defined in
22 subdivision (c) of Section 11391.

23 (l) For purposes of this section, evidence of any of the following
24 circumstances shall not, in and of itself, be deemed a failure to
25 provide or offer reasonable services:

26 (1) The child has been placed with a foster family that is eligible
27 to adopt a child, or has been placed in a preadoptive home.

28 (2) The case plan includes services to make and finalize a
29 permanent placement for the child if efforts to reunify fail.

30 (3) Services to make and finalize a permanent placement for
31 the child, if efforts to reunify fail, are provided concurrently with
32 services to reunify the family.

33 (m) The implementation and operation of the amendments to
34 subdivisions (c) and (g) enacted at the 2005–06 Regular Session
35 shall be subject to appropriation through the budget process and
36 by phase, as provided in Section 366.35.

37 SEC. 2. Section 366.22 of the Welfare and Institutions Code,
38 as amended by Section 7 of Chapter 219 of the Statutes of 2014,
39 Code, is amended to read:

1 366.22. (a) When a case has been continued pursuant to
2 paragraph (1) or (2) of subdivision (g) of Section 366.21, the
3 permanency review hearing shall occur within 18 months after the
4 date the child was originally removed from the physical custody
5 of his or her parent or legal guardian. After considering the
6 admissible and relevant evidence, the court shall order the return
7 of the child to the physical custody of his or her parent or legal
8 guardian unless the court finds, by a preponderance of the evidence,
9 that the return of the child to his or her parent or legal guardian
10 would create a substantial risk of detriment to the safety, protection,
11 or physical or emotional well-being of the child. The social worker
12 shall have the burden of establishing that detriment. At the
13 permanency review hearing, the court shall consider the criminal
14 history, obtained pursuant to paragraph (1) of subdivision (f) of
15 Section 16504.5, of the parent or legal guardian subsequent to the
16 child's removal, to the extent that the criminal record is
17 substantially related to the welfare of the child or the parent's or
18 legal guardian's ability to exercise custody and control regarding
19 his or her child, provided that the parent or legal guardian agreed
20 to submit fingerprint images to obtain criminal history information
21 as part of the case plan. The court shall also consider whether the
22 child can be returned to the custody of his or her parent who is
23 enrolled in a certified substance abuse treatment facility that allows
24 a dependent child to reside with his or her parent. The fact that the
25 parent is enrolled in a certified substance abuse treatment facility
26 shall not be, for that reason alone, prima facie evidence of
27 detriment. The failure of the parent or legal guardian to participate
28 regularly and make substantive progress in court-ordered treatment
29 programs shall be prima facie evidence that return would be
30 detrimental. In making its determination, the court shall review
31 and consider the social worker's report and recommendations and
32 the report and recommendations of any child advocate appointed
33 pursuant to Section 356.5; shall consider the efforts or progress,
34 or both, demonstrated by the parent or legal guardian and the extent
35 to which he or she availed himself or herself of services provided,
36 taking into account the particular barriers of a minor parent *or a*
37 *nonminor dependent parent*, or an incarcerated or institutionalized
38 parent's or legal guardian's access to those court-mandated services
39 and ability to maintain contact with his or her child; and shall make
40 appropriate findings pursuant to subdivision (a) of Section 366.

1 Whether or not the child is returned to his or her parent or legal
2 guardian, the court shall specify the factual basis for its decision.
3 If the child is not returned to a parent or legal guardian, the court
4 shall specify the factual basis for its conclusion that return would
5 be detrimental. If the child is not returned to his or her parent or
6 legal guardian, the court shall consider, and state for the record,
7 in-state and out-of-state options for the child's permanent
8 placement. If the child is placed out of the state, the court shall
9 make a determination whether the out-of-state placement continues
10 to be appropriate and in the best interests of the child.

11 Unless the conditions in subdivision (b) are met and the child is
12 not returned to a parent or legal guardian at the permanency review
13 hearing, the court shall order that a hearing be held pursuant to
14 Section 366.26 in order to determine whether adoption, or, in the
15 case of an Indian child, in consultation with the child's tribe, tribal
16 customary adoption, guardianship, or long-term foster care is the
17 most appropriate plan for the child. On and after January 1, 2012,
18 a hearing pursuant to Section 366.26 shall not be ordered if the
19 child is a nonminor dependent, unless the nonminor dependent is
20 an Indian child, and tribal customary adoption is recommended as
21 the permanent plan. However, if the court finds by clear and
22 convincing evidence, based on the evidence already presented to
23 it, including a recommendation by the State Department of Social
24 Services when it is acting as an adoption agency or by a county
25 adoption agency, that there is a compelling reason, as described
26 in paragraph (5) of subdivision (g) of Section 366.21, for
27 determining that a hearing held under Section 366.26 is not in the
28 best interests of the child because the child is not a proper subject
29 for adoption and has no one willing to accept legal guardianship,
30 the court may, only under these circumstances, order that the child
31 remain in long-term foster care. On and after January 1, 2012, the
32 nonminor dependent's legal status as an adult is in and of itself a
33 compelling reason not to hold a hearing pursuant to Section 366.26.
34 The court may order that a nonminor dependent who otherwise is
35 eligible pursuant to Section 11403 remain in a planned, permanent
36 living arrangement. If the court orders that a child who is 10 years
37 of age or older remain in long-term foster care, the court shall
38 determine whether the agency has made reasonable efforts to
39 maintain the child's relationships with individuals other than the
40 child's siblings who are important to the child, consistent with the

1 child's best interests, and may make any appropriate order to ensure
2 that those relationships are maintained. The hearing shall be held
3 no later than 120 days from the date of the permanency review
4 hearing. The court shall also order termination of reunification
5 services to the parent or legal guardian. The court shall continue
6 to permit the parent or legal guardian to visit the child unless it
7 finds that visitation would be detrimental to the child. The court
8 shall determine whether reasonable services have been offered or
9 provided to the parent or legal guardian. For purposes of this
10 subdivision, evidence of any of the following circumstances shall
11 not, in and of themselves, be deemed a failure to provide or offer
12 reasonable services:

13 (1) The child has been placed with a foster family that is eligible
14 to adopt a child, or has been placed in a preadoptive home.

15 (2) The case plan includes services to make and finalize a
16 permanent placement for the child if efforts to reunify fail.

17 (3) Services to make and finalize a permanent placement for
18 the child, if efforts to reunify fail, are provided concurrently with
19 services to reunify the family.

20 (b) If the child is not returned to a parent or legal guardian at
21 the permanency review hearing and the court determines by clear
22 and convincing evidence that the best interests of the child would
23 be met by the provision of additional reunification services to a
24 parent or legal guardian who is making significant and consistent
25 progress in a court-ordered residential substance abuse treatment
26 program, ~~a minor parent who was either a minor parent or a~~
27 *nonminor dependent parent* at the time of the initial hearing making
28 significant and consistent progress in establishing a safe home for
29 the child's return, or a parent recently discharged from
30 incarceration, institutionalization, or the custody of the United
31 States Department of Homeland Security and making significant
32 and consistent progress in establishing a safe home for the child's
33 return, the court may continue the case for up to six months for a
34 subsequent permanency review hearing, provided that the hearing
35 shall occur within 24 months of the date the child was originally
36 taken from the physical custody of his or her parent or legal
37 guardian. The court shall continue the case only if it finds that
38 there is a substantial probability that the child will be returned to
39 the physical custody of his or her parent or legal guardian and
40 safely maintained in the home within the extended period of time

1 or that reasonable services have not been provided to the parent
2 or legal guardian. For the purposes of this section, in order to find
3 a substantial probability that the child will be returned to the
4 physical custody of his or her parent or legal guardian and safely
5 maintained in the home within the extended period of time, the
6 court shall be required to find all of the following:

7 (1) That the parent or legal guardian has consistently and
8 regularly contacted and visited with the child.

9 (2) That the parent or legal guardian has made significant and
10 consistent progress in the prior 18 months in resolving problems
11 that led to the child's removal from the home.

12 (3) The parent or legal guardian has demonstrated the capacity
13 and ability both to complete the objectives of his or her substance
14 abuse treatment plan as evidenced by reports from a substance
15 abuse provider as applicable, or complete a treatment plan
16 postdischarge from incarceration, institutionalization, or detention,
17 or following deportation to his or her country of origin and his or
18 her return to the United States, and to provide for the child's safety,
19 protection, physical and emotional well-being, and special needs.

20 For purposes of this subdivision, the court's decision to continue
21 the case based on a finding or substantial probability that the child
22 will be returned to the physical custody of his or her parent or legal
23 guardian is a compelling reason for determining that a hearing
24 held pursuant to Section 366.26 is not in the best interests of the
25 child.

26 The court shall inform the parent or legal guardian that if the
27 child cannot be returned home by the subsequent permanency
28 review hearing, a proceeding pursuant to Section 366.26 may be
29 instituted. The court shall not order that a hearing pursuant to
30 Section 366.26 be held unless there is clear and convincing
31 evidence that reasonable services have been provided or offered
32 to the parent or legal guardian.

33 (c) (1) Whenever a court orders that a hearing pursuant to
34 Section 366.26, including when a tribal customary adoption is
35 recommended, shall be held, it shall direct the agency supervising
36 the child and the county adoption agency, or the State Department
37 of Social Services when it is acting as an adoption agency, to
38 prepare an assessment that shall include:

39 (A) Current search efforts for an absent parent or parents.

1 (B) A review of the amount of and nature of any contact between
2 the child and his or her parents and other members of his or her
3 extended family since the time of placement. Although the
4 extended family of each child shall be reviewed on a case-by-case
5 basis, “extended family” for the purposes of this subparagraph
6 shall include, but not be limited to, the child’s siblings,
7 grandparents, aunts, and uncles.

8 (C) An evaluation of the child’s medical, developmental,
9 scholastic, mental, and emotional status.

10 (D) A preliminary assessment of the eligibility and commitment
11 of any identified prospective adoptive parent or legal guardian,
12 particularly the caretaker, to include a social history including
13 screening for criminal records and prior referrals for child abuse
14 or neglect, the capability to meet the child’s needs, and the
15 understanding of the legal and financial rights and responsibilities
16 of adoption and guardianship. If a proposed legal guardian is a
17 relative of the minor, the assessment shall also consider, but need
18 not be limited to, all of the factors specified in subdivision (a) of
19 Section 361.3 and Section 361.4.

20 (E) The relationship of the child to any identified prospective
21 adoptive parent or legal guardian, the duration and character of
22 the relationship, the degree of attachment of the child to the
23 prospective relative guardian or adoptive parent, the relative’s or
24 adoptive parent’s strong commitment to caring permanently for
25 the child, the motivation for seeking adoption or legal guardianship,
26 a statement from the child concerning placement and the adoption
27 or legal guardianship, and whether the child, if over 12 years of
28 age, has been consulted about the proposed relative guardianship
29 arrangements, unless the child’s age or physical, emotional, or
30 other condition precludes his or her meaningful response, and if
31 so, a description of the condition.

32 (F) An analysis of the likelihood that the child will be adopted
33 if parental rights are terminated.

34 (G) In the case of an Indian child, in addition to subparagraphs
35 (A) to (F), inclusive, an assessment of the likelihood that the child
36 will be adopted, when, in consultation with the child’s tribe, a
37 tribal customary adoption, as defined in Section 366.24, is
38 recommended. If tribal customary adoption is recommended, the
39 assessment shall include an analysis of both of the following:

1 (i) Whether tribal customary adoption would or would not be
2 detrimental to the Indian child and the reasons for reaching that
3 conclusion.

4 (ii) Whether the Indian child cannot or should not be returned
5 to the home of the Indian parent or Indian custodian and the reasons
6 for reaching that conclusion.

7 (2) (A) A relative caregiver's preference for legal guardianship
8 over adoption, if it is due to circumstances that do not include an
9 unwillingness to accept legal or financial responsibility for the
10 child, shall not constitute the sole basis for recommending removal
11 of the child from the relative caregiver for purposes of adoptive
12 placement.

13 (B) Regardless of his or her immigration status, a relative
14 caregiver shall be given information regarding the permanency
15 options of guardianship and adoption, including the long-term
16 benefits and consequences of each option, prior to establishing
17 legal guardianship or pursuing adoption. If the proposed permanent
18 plan is guardianship with an approved relative caregiver for a
19 minor eligible for aid under the Kin-GAP Program, as provided
20 for in Article 4.7 (commencing with Section 11385) of Chapter 2
21 of Part 3 of Division 9, the relative caregiver shall be informed
22 about the terms and conditions of the negotiated agreement
23 pursuant to Section 11387 and shall agree to its execution prior to
24 the hearing held pursuant to Section 366.26. A copy of the executed
25 negotiated agreement shall be attached to the assessment.

26 (d) This section shall become operative January 1, 1999. If at
27 any hearing held pursuant to Section 366.26, a legal guardianship
28 is established for the minor with an approved relative caregiver,
29 and juvenile court dependency is subsequently dismissed, the minor
30 shall be eligible for aid under the Kin-GAP Program, as provided
31 for in Article 4.5 (commencing with Section 11360) or Article 4.7
32 (commencing with Section 11385), as applicable, of Chapter 2 of
33 Part 3 of Division 9.

34 (e) As used in this section, "relative" means an adult who is
35 related to the child by blood, adoption, or affinity within the fifth
36 degree of kinship, including stepparents, stepsiblings, and all
37 relatives whose status is preceded by the words "great,"
38 "great-great," or "grand," or the spouse of any of those persons
39 even if the marriage was terminated by death or dissolution. If the
40 proposed permanent plan is guardianship with an approved relative

1 caregiver for a minor eligible for aid under the Kin-GAP Program,
2 as provided for in Article 4.7 (commencing with Section 11385)
3 of Chapter 2 of Part 3 of Division 9, “relative” as used in this
4 section has the same meaning as “relative” as defined in
5 subdivision (c) of Section 11391.

6 (f) The implementation and operation of the amendments to
7 subdivision (a) enacted at the 2005–06 Regular Session shall be
8 subject to appropriation through the budget process and by phase,
9 as provided in Section 366.35.

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